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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CHEYENNE C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. CHEYENNE C., Defendant and Appellant.	D068209 (Super. Ct. No. J235724)

APPEAL from a judgment of the Superior Court of San Diego County, Howard H. Shore, Aaron H. Katz, Judges. Affirmed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Allison V. Hawley, Deputy Attorneys General, for Plaintiff and Respondent.

Cheyenne C. admitted to investigators that she started small fires in her backyard on May 13 and May 14, 2014. On May 13, she lit leaves and placed them on the end of a fallen tree branch, charring a small area of the branch. Sheriff's deputies and firefighters responded and quickly extinguished the fire. The next day, she set fire to a grove of trees. Within minutes, what would come to be known as the Cocos Fire began burning less than a half mile away in Cocos Canyon directly downwind from Cheyenne's backyard fire. The Cocos Fire eventually burned nearly 2,000 acres and damaged nearly 50 homes and structures.

In resulting juvenile delinquency proceedings, the juvenile court found true two allegations arising from the May 13 fire: that Cheyenne unlawfully set fire to "forest land" (Pen. Code, § 452, subd. (c)),[1] and unlawfully allowed a fire to escape from her control without using proper precautions (Health & Saf. Code, § 13000). Regarding the May 14 fire, the juvenile court found that an ember from Cheyenne's backyard fire traveled to Cocos Canyon and started the Cocos Fire. Consequently, the court found true the allegations that Cheyenne committed arson of an inhabited structure (§ 451, subd. (b)), and arson of a structure and forest land (§ 451, subd. (c)). The court also found true multiple-structure enhancements on both arson counts.

On appeal, Cheyenne contends insufficient evidence supports the true finding that she burned forest land on May 13, reasoning the leaves and portion of a branch she set on fire do not constitute forest land as defined by statute. She also contends the juvenile

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1 Undesignated statutory references are to the Penal Code.

court erred by excluding expert testimony bearing on whether she had the cognitive ability to form the mental state of recklessness required to sustain the court's true finding. Neither contention has merit.

Cheyenne also contends insufficient evidence supports the juvenile court's true findings on the two arson counts stemming from the May 14 fire and on the multiple-structure enhancements. This contention also lacks merit.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. *The Prosecution Evidence*

In 2014, Cheyenne was 13 years old and lived with her family on Washingtonia Drive, a street at the top of Cocos Canyon in a mountainous, "quasi-rural," "urban interface" portion of San Marcos.[2] The home was situated on approximately one acre of unenclosed land, some of which had been cleared, leaving trees around the edges.

A. *The May 13 Fire*

May 13, 2014 was a hot, dry day with Santa Ana winds; a "red flag" warning was in effect.[3] Cheyenne took a lighter from her kitchen about 100 to 150 feet into her backyard, lit "[a] few leaves" she had picked from branches, and placed them on the stump end of a fallen tree branch. When the fire grew, Cheyenne barged into her 15-

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2 "Urban interface" refers to properties with larger lot sizes and more vegetation.

3 The National Weather Service issues a red flag warning when weather conditions meet certain criteria agreed upon by the National Weather Service and local fire agencies. Relevant red flag criteria include humidity below 15 percent and sustained winds of 25 miles per hour with gusts up to 35 miles per hour for more than six hours.

year-old sister's room and—while "giggling"—told her about the fire. When her sister did not take her seriously, Cheyenne told her mother about the fire. The mother called 911.

A sheriff's deputy and firefighters responded. The deputy arrived first and "observed a probably three- or four-inch diameter tree or a limb that had fallen, and the stump was sticking up probably three to four feet in the air, with a small amount of smoke and a very small—maybe something like a candle flame—in the middle of it." The branch appeared to have fallen a few months earlier. It was still smoldering or smoking when firefighters arrived. They extinguished it with a garden hose and chipped away at it to ensure it would not rekindle.

The charred area on the fallen branch was approximately four inches by eight inches and was at the raised end of the branch. Although there was vegetation on the ground beneath the branch that could have burned, none had. The responders searched the immediate vicinity for potential causes of the fire, but found none. As the firefighters were leaving, one of them observed two adolescent girls on the balcony giggling as they went in and out of the house.

B. *The May 14 "Washingtonia Fire"*

A red flag warning was in effect again the following day, May 14. Six wildfires were burning in San Diego County. While driving home from Carlsbad, Cheyenne's family saw and commented on a large area of smoke coming from a fire in Carlsbad. Once home, they watched news coverage of the fire, and Cheyenne chatted about it with friends on social media.

Within about 30 minutes of Cheyenne's final social media post, she took a lighter into her backyard—farther than she had gone the day before—and set fire to a branch in a grove of trees near the boundary of her neighbor's property.[4] The fire got bigger than the day before. Cheyenne again barged into her sister's room and—while giggling—told her about the fire. Cheyenne then told her mother, who called 911 as she loaded the children into the car to evacuate. The mother reported seeing "[t]rees on fire" and described the fire as "moving fast." When the dispatcher asked how many trees were on fire, the mother responded, "I don't know. Too big to see." As the call ended, the mother stated the fire was "getting really big" and "we're evacuating."

Several neighbors saw the fire. Gunnar Stevens rushed toward the fire with garden tools to try to fight it. When he arrived, the fire was burning in a 15- or 20-foot diameter on the ground and in the base of several eucalyptus trees. The bases of the trees were "engulfed in flames" that "shot up the eucalyptus trees" "a considerable ways." He saw embers from the fire start several smaller spot fires to the west of the original fire and in line with the direction the wind was blowing.

Another neighbor recorded a video of the fire with his cell phone and can be heard saying "Bye bye house."

Meanwhile, a group of San Diego County Sheriff's detectives who had been assigned to fire patrol duty on May 14 due to the ongoing fires and high fire danger

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[4] A licensed forester working for the California Department of Forestry and Fire Protection (Cal Fire) later identified the trees as two legume eucalyptus trees, one silver dollar eucalyptus tree, and one Aleppo pine.

noticed a plume of smoke in the Washingtonia Drive area from miles away. They proactively began driving toward the fire, and were officially dispatched while en route. They were the first emergency responders to arrive. Detective Russell Ryan observed "that everything was blown to the west and that the houses to the west were possibly going to be in danger of burning," so he began driving west to evacuate nearby residents.

A sheriff's deputy who also responded observed a 15-foot by 15-foot area of fire in a "tree area" or "brushy area" in Cheyenne's backyard. The deputy and his partner attempted to fight the fire with a fire extinguisher, but the fire spread from the brushy area and traveled up a tree and became "uncontrollable." The deputy estimated the flames were 15 to 20 feet above his head. The deputies decided to secure the neighborhood while they waited for firefighters to arrive.

San Marcos Fire Department Captain Thomas Spencer was dispatched to the Washingtonia Fire from a fire station four or five miles away. He saw a column of smoke rising from the Washingtonia Drive area just after he left the station. Knowing his was the only fire unit responding, and aware of the fire danger that day, Spencer upgraded the fire from a "tree fire," which requires only one fire unit to respond, to a "full vegetation response," which resulted in the dispatch of four additional fire engines and a battalion chief.

Spencer's engine was the first to arrive. His crew began extinguishing spot fires that had ignited nearby, west of the original fire. The original fire was then burning in an approximately 50-foot by 50-foot area. Fire was burning in brush and in the lower branches of trees in the grove; nothing in the crown of the trees was burning then.

Firefighters had the Washingtonia Fire under control within about 10 minutes of arriving. The main Washingtonia Fire burned an area approximately 111 feet by 42 feet.

C. *The May 14 "Cocos Fire"*

San Marcos Fire Chief Brett Van Wey began responding to the Washingtonia Fire when he heard it upgraded from a tree fire to a vegetation fire. He arrived about 15 minutes later and observed smoke blowing west. Seeing adequate resources at the scene, Van Wey kept driving a few hundred yards to the intersection of Washingtonia Drive and Cocos Drive to turn around. From there, he observed a small column of smoke rising from Cocos Canyon, and reported by radio to the battalion chief handling the Washingtonia Fire that he observed "a second spot at the . . . midslope of Cocos below."

Cocos Canyon is positioned below and to the west of Washingtonia Drive. The end of Cocos Drive sits approximately 300 feet above the canyon base on the north ridge, and Solo Roble Drive sits approximately 600 feet above the canyon base on the south ridge. Fire personnel described the canyon sides as "modestly steep" to "very steep," and covered with "moderate" to "[v]ery" dense vegetation ranging in height from three feet tall to more than six feet tall.

The Cocos Fire started .44 of a mile from the Washingtonia Fire. It was approximately 10 feet by 10 feet when Chief Van Wey discovered it. As the fire climbed the sloped sides of the canyon, it gained momentum and began to be carried by the wind. The Cocos Fire burned nearly 2,000 acres, damaged or destroyed nearly 50 homes and structures, and resulted in 30,000 residents being evacuated. It took approximately 1,300 firefighters 10 days to contain the fire.

D. *The Investigation*

When firefighters fighting the May 14 Washingtonia Fire learned there had been a fire at the same address the day before, they became suspicious and requested assistance from an inspector in the San Marcos Fire Department's prevention division. The inspector, in turn, requested assistance from Arnold Van Lingen, a detective and bomb technician for the sheriff's bomb and arson unit. Cal Fire dispatched two Fire Captain Specialists who are trained in law enforcement and fire investigations "to assist Detective Van Lingen with whatever he needed."

Although Detective Van Lingen had already determined what he believed to be the origin of the Washingtonia Fire, he and the Cal Fire investigators agreed that Van Lingen would handle the criminal investigation and they would take over the "cause and origin" investigation of the Washingtonia and Cocos Fires. Van Lingen interviewed Cheyenne, and she eventually admitted she started the May 13 and May 14 fires in her backyard in the manner described above. We discuss Cheyenne's interview in greater detail below.

The Cal Fire investigators conducted their investigation independently from Detective Van Lingen's criminal investigation. They concluded the May 13 fire was small and unrelated to the May 14 fires. They also concluded the May 14 Washingtonia Fire was caused by either "playing with fire" or "incendiary."[5] Because the investigators

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5 One of the Cal Fire investigators testified that "playing with fire" is generally done by a child under the age of 14 who does not know right from wrong, and "incendiary" refers to an ignition device that is left behind or a "hot start" in which the perpetrator lights vegetation with a match or lighter and takes the instrument with him or her so that nothing is left behind at the scene. He explained that the difference between playing with

could not isolate a single cause, the official cause of the Washingtonia Fire was deemed "undetermined."

The investigators determined the Cocos Fire was caused by an ember that traveled by wind from the Washingtonia Fire to Cocos Canyon. In short, the prosecution witnesses uniformly testified that May 14 was a hot, dry, windy day; that the Cocos Fire and other small spot fires were in line with and downwind from the Washingtonia Fire; and that embers can travel distances greater than the distance between the Washingtonia Fire and the Cocos Fire. We discuss the prosecution's causation evidence in greater detail below.

II. *The Defense Evidence*

Cheyenne called four witnesses. One was a neighbor on Washingtonia Drive who testified that he used a hose to extinguish a spot fire on May 14 and the wind initially blew the water east, not west (the direction of the Cocos Fire).

Another was a resident (Robert Hoover) who lived in the house at the end of Cocos Drive. To support the defense theory that someone else started the Cocos Fire from inside the canyon, defense counsel elicited from Hoover that Cocos Canyon is accessible by foot and that someone who started the Cocos Fire while in the canyon could have escaped by traveling the opposite direction of the fire. However, Hoover acknowledged he had "no idea" whether someone "could beat it out of there in time to

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fire and incendiary is the age of the perpetrator and the ability to distinguish right from wrong.

beat the fire." He also testified he had never seen anyone in the canyon in the time he had lived there, including on May 14.

Cheyenne's two remaining witnesses were fire experts who testified about causation of the Cocos Fire and challenged certain of the prosecution witnesses' assumptions. We discuss their testimony in greater detail below.

III. *Jurisdiction and Disposition Hearings*

The People filed a petition under Welfare and Institutions Code section 602 asserting charges arising from the May 13 and May 14 fires. Regarding the May 13 fire, the petition alleged Cheyenne unlawfully set fire to "forest land" (§ 452, subd. (c); count 4), and unlawfully allowed a fire to escape from her control without using proper precautions (Health & Saf. Code, § 13000; count 5). Regarding the May 14 fires, the petition alleged Cheyenne committed arson of an inhabited structure (§ 451, subd. (b); count 1), committed arson of a structure and forest land (§ 451, subd. (c); count 2), and unlawfully set fire to a structure and forest land (§ 452, subd. (c); count 3).[6] The petition alleged multiple-structure enhancements on the two arson counts. (§ 451.1, subd. (a)(4).)

After a lengthy jurisdictional hearing in which 21 witnesses testified (17 for the prosecution, four for the defense) and voluminous exhibits (including photographs, videos, and maps) were received in evidence, the juvenile court (Hon. Howard H. Shore) found true both counts arising from the May 13 fire, and both arson counts arising from

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6 The People acknowledged count 3 was a lesser included offense of count 2.

the May 14 fire.[7] The court also found true the multiple-structure enhancements on both arson counts.

At a later disposition hearing, the juvenile court (Hon. Aaron H. Katz) adjudged Cheyenne a ward, placed her on supervised probation, and ordered that she complete 400 hours of community service and pay restitution in excess of $5.8 million.

DISCUSSION

I. *Sufficiency of the Evidence Regarding Unlawfully Burning Forest Land on May 13*

Cheyenne contends insufficient evidence supports the juvenile court's finding that she unlawfully set fire to "forest land" on May 13 because "a leaf on a branch in a residential backyard" does not satisfy the statutory definition of forest land. Although stated as a challenge to the sufficiency of the evidence, this is truly a question of statutory interpretation, which we review de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.)

"A person is guilty of unlawfully causing a fire when he [or she] recklessly sets fire to or burns or causes to be burned, any structure, *forest land* or property." (§ 452, italics added.) " 'Forest land' means any brush covered land, cut-over land, forest, grasslands, or woods." (§ 450, subd. (b).) Section 450 does not further define these latter terms. "[I]n the absence of specifically defined meaning, a court looks to the plain meaning of a word as understood by the ordinary person, which would typically be a dictionary definition." (*Hammond v. Agran* (1999) 76 Cal.App.4th 1181, 1189; see *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1122.)

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7 Having found count 2 true, the court dismissed the lesser included count 3.

The Oxford English Dictionary Online defines "brush" primarily as "Loppings of trees or hedges; cut brushwood." (Oxford English Dict. Online <http://www.oed.com/search?searchType=dictionary&q=brush&_searchBtn=Search > [as of June 14, 2016] at def. 1.)[8] The Random House Unabridged Dictionary gives the following as the first two definitions of "brush": "a dense growth of bushes, shrubs, etc.; scrub; thicket"; and "a pile or covering of lopped or broken branches; brushwood." (Random House Unabridged Dict. (2d ed. 1993) p. 269.) And Webster's Third New International Dictionary defines "brush" as "scrub vegetation" and "land covered with scrub vegetation." (Webster's 3d New Internat. Dict. (2002) p. 286.)

The leaves and branch Cheyenne set fire to on May 13 easily fall within the plain meaning of "brush" because Cheyenne set fire to a "broken branch[]" (Random House Unabridged Dict., *supra*, at p. 269) on "land covered with scrub vegetation" (Webster's 3d New Internat Dict., *supra*, at p. 286). Thus, she set fire to brush-covered land, a component of forest land. This is sufficient to support the juvenile court's true finding.

In addition, Cheyenne's suggestion she merely set fire to *leaves* in a *residential* backyard is contradicted by the record. The sheriff's deputy who responded to the 911 call on May 13 described seeing "something like a candle *flame* in the middle of" *the branch*. (Italics added.) Witnesses described the property as approximately one acre of unenclosed, partially cleared/partially wooded land in a mountainous, quasi-rural, urban

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8 The Oxford English Dictionary Online defines "loppings" as "Branches and shoots lopped from a tree." (OED Online, *supra*, <http://www.oed.com/view/Entry/110267?isAdvanced=false&result=1&rskey=PeED9m&> [as of June 15, 2016] at def. 2.)

interface area. The scene of the May 13 fire was about 100 to 150 feet behind and downhill from Cheyenne's residence and rested above flammable vegetation. Photographs and a video taken by Cal Fire show the branch virtually surrounded by trees and brush. This further supports the juvenile court's finding that Cheyenne set fire to forest land.

II. *Exclusion of Cheyenne's Expert Witness*

Cheyenne contends the juvenile court erred by excluding expert testimony regarding her "cognitive abilities and learning issues," which she asserts would have shown she was unable to form the mental state of recklessness required to support the true finding on the section 452 count arising from the May 13 fire (count 4).[9] She argues the juvenile court misinterpreted Penal Code provisions abolishing the diminished-capacity defense and rendering evidence of mental capacity inadmissible at the guilt phase of trial except as it relates to a specific intent crime. (See §§ 25, 28.)[10] The

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9 Because the juvenile court dismissed the section 452 count arising from the May 14 fire, Cheyenne's challenge on appeal relates only to the May 13 fire.

10 Section 25, subdivision (a) states: "The defense of diminished capacity is hereby abolished. In a criminal action, as well as any juvenile court proceeding, evidence concerning an accused person's intoxication, trauma, mental illness, disease, or defect shall not be admissible to show or negate capacity to form the particular purpose, intent, motive, malice aforethought, knowledge, or other mental state required for the commission of the crime charged."

Section 28, subdivision (a) states: "Evidence of mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible *solely on the*

Attorney General counters that the juvenile court properly excluded the proffered testimony because section 452 is not a specific intent crime. We agree. Further, even if the juvenile court had so erred, any such error would have been harmless in light of the juvenile court's emphasis on the simplicity of the issues involved in the May 13 fire.

A. *Background*

In interviews with Detective Van Lingen, Cheyenne initially denied starting the backyard fires on May 13 and 14, but eventually admitted doing so.[11] She said she knew the difference between right and wrong, and had learned it from her parents and at school. When asked to give an example of something wrong, Cheyenne said, "What I did." She said she knew at the time of the fires that starting a fire was wrong, and that she had known this for "[a] long time," meaning "[y]ears."

Before the jurisdiction hearing, Cheyenne moved to permit testimony from a forensic psychologist regarding Cheyenne's "cognitive deficits" and learning issues to negate the recklessness element of the counts under section 452 (counts 3 and 4). At the outset of argument on the motion, the court confirmed with defense counsel that the proffered evidence related only to the counts under section 452.[12] The court then heard

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issue of whether or not the accused actually formed a required specific intent . . . when a specific intent crime is charged." (Italics added.)

11 Cheyenne's counsel below initially challenged the admissibility of her statements, but later withdrew the challenge. She does not challenge their admissibility on appeal.

12 Because Cheyenne expressly and repeatedly limited the scope of her challenge to the counts under section 452, we do not consider her argument—made for the first time on appeal—that the evidence would also have been relevant to the juvenile court's

defense counsel's argument, and summarized it as follows: "the general tenor of this testimony would be that . . . the minor's diagnosis or diagnoses, affect her cognitive ability to understand fire-setting behaviors and, therefore, she was unaware of what a reasonable person will do under the same circumstances."

After reading aloud sections 25 and 28 (and others), the court explained why it found the proffered expert testimony inadmissible:

> "So one thing is clear that anything relating to the minor's ability to form or understand things would be precluded by Penal Code section 25 and no expert could testify as to what she did or did not believe at the time of the alleged offense, and most importantly, Penal Code section 28 makes clear that such evidence in any event is only admissible when specific intent crimes are charged.
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> "Now, the case law is clear that although recklessness is not pure general intent, it requires a little bit more than the typical general intent crime. All the case law I'm familiar with describes it as a general versus specific intent crime, so it would seem to me that statutorily the evidence you are tendering would be precluded by statute . . . . It sounds like it's highly relevant at the time of a disposition hearing, but not in the guilt phase of this hearing."

At the conclusion of the jurisdiction hearing, the court dismissed the section 452 count arising from the May 14 Washingtonia Fire, and explained at length why it found the recklessness element of section 452 satisfied for the May 13 fire:

> "So referring to the May 13th fire, we know that the minor admitted setting fire to leaves or whatever forest land was present on the property, so there's no question that the fire was intentional. She

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determination under section 26 of whether Cheyenne's age prevented her from having the capacity to commit a crime. (See § 26 ["All persons are capable of committing crimes except those belonging to the following classes: [¶] One—Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness."].) The juvenile court found this presumption "ha[d] been rebutted by clear and convincing evidence as required by law."

knew that setting the fire was wrong because she was asked that by the detectives in her taped interview, and she was asked how long she knew it was wrong, and she said, '[a] long time,' and she was asked by the detectives, 'What's a long time?" And she said, '[y]ears.'

"So it's reasonable to infer that she understood why it was wrong: It was wrong because of the dangers involved. She was aware of the harm it could do, and she chose to ignore that risk.

"With regard to the element of recklessness, I think that regardless of what one uses as a reasonable person standard—an adult or a child age 13—the element of the awareness of the risk involved has to be evaluated according to the facts of this specific case.

"And in this case, on May 13th, we're not talking about a need for her to be aware of a risk that houses might burn or that there might be extensive damage of any kind because we know that what happened on May 13th was that there was some burning of forest land, and clearly, that is well within her awareness of the risk required by the statute. If we were talking about houses burning down on May 13th, I would have to go into a deeper analysis of what that standard means, but because of the relatively minor damage that was done on May 13th, clearly she had to have been aware of that level of risk with regard to that damage.

"And I think that's what makes it distinguishable from the case cited by the defense of *People v. Budish* [(1982)] 131 Cal.App.3d 1043, where the court went through an extensive analysis of the . . . reasonableness of the defendant's awareness of the risk that lighting a campfire could result in the loss of 80 homes and 6,000 acres of land burned.

"So this is a very different situation. We don't have that result [on] May 13th, so there's no reason to compare this case to that case. So clearly she was aware of the risk and I think meets the standard of recklessness required for count four."

B. *Standard of Review*

"The trial court has broad discretion in deciding whether to admit or exclude expert testimony [citation], and its decision as to whether expert testimony meets the

standard for admissibility is subject to review for abuse of discretion." (*People v. McDowell* (2012) 54 Cal.4th 395, 426.) However, " '[A] ruling otherwise within the trial court's power will nonetheless be set aside where it appears from the record that in issuing the ruling the court failed to exercise the discretion vested in it by law.' " (*People v. Downey* (2000) 82 Cal.App.4th 899, 912.)

C. *Analysis*

It is clear under sections 25 and 28 that evidence of Cheyenne's mental state is inadmissible to negate her capacity to form the mental state required for the commission of a crime unless that crime requires specific intent. (See § 28 [evidence of mental capacity "is admissible *solely* on the issue of whether or not the accused actually formed a *required specific intent . . . when a specific intent crime is charged*"], italics added.) Section 452 requires the mental state of "reckless[ness]" (§ 452), a standard Cheyenne concedes "is distinguishable from specific intent." (See *In re Kent W.* (1986) 181 Cal.App.3d 721, 723 [section 452 requires recklessness, not intent].) This ends our inquiry, as the juvenile court did not abuse its discretion in excluding evidence expressly made inadmissible by statute.

Cheyenne argues, however, that evidence of capacity to form recklessness is nonetheless admissible because recklessness "entails more than general intent." We are not persuaded. Even if Cheyenne's underlying premise is true—an issue we do not decide—it does not follow that merely "entail[ing] more than general intent" rises to the level of specific intent. (See *People v. Atkins* (2001) 25 Cal.4th 76, 88 ["The fact that a crime requires a greater mental state than recklessness does not mean that it is a specific

intent crime, rather than a general intent crime."].) Consequently, because section 452 is not a specific intent crime, the juvenile court did not abuse its discretion in excluding evidence of Cheyenne's mental capacity. (§§ 25, 28.)

Even if the juvenile court had erred, we would find no prejudice, even under the harmless-beyond-a-reasonable-doubt standard Cheyenne advocates. (See *Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*).)[13] As the juvenile court emphasized in its ruling, the charge relating to the May 13 fire did not require "deep[] analysis"—it involved only the question of whether setting fire to leaves and a branch might foreseeably result in burning those leaves and that branch. The juvenile court found persuasive Cheyenne's admission that she deliberately set the fire and that she knew doing so was wrong. In this context, the court could properly have determined that expert testimony would be neither necessary nor helpful. There was no prejudicial error.

III. *Sufficiency of the Evidence Regarding Causation of the Cocos Fire*

Cheyenne challenges the sufficiency of the evidence supporting the juvenile court's finding that the May 14 Washingtonia Fire caused the Cocos Fire. She contends the prosecution witnesses lacked foundation for their opinions regarding causation, and failed to account for evidence indicating someone else could have started the fire from within the canyon. We are not persuaded.

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13 We seriously doubt the *Chapman* standard applies as the juvenile court's ruling did not completely preclude Cheyenne from presenting a defense based on her lack of understanding of fire danger. That is, the court did not exclude evidence that would have shown she was never taught about fire danger and made clear she was entitled to present such evidence; rather, the court only excluded evidence that would have shown her cognitive ability to process that information.

A. *Standard of Review*

In reviewing a challenge to the sufficiency of the evidence in a juvenile delinquency case, we apply the same substantial evidence standard of review that we apply in adult criminal proceedings. (See *In re Arcenio V.* (2006) 141 Cal.App.4th 613, 615.) Under this standard, our "role is a limited one. ' "The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." ' " (*People v. Smith* (2005) 37 Cal.4th 733, 738-739 (*Smith*).)

" ' "Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder." ' " (*Smith, supra*, 37 Cal.4th at p. 739.) "We cannot reject the testimony of a witness that the trier of fact chooses to believe unless the testimony is physically impossible or its falsity is apparent without resorting to inferences or deductions." (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.) "The testimony of just one witness is enough to sustain a conviction, so long as that testimony is not inherently incredible." (*Ibid.*; see *People v. Elliott* (2012) 53 Cal.4th 535, 585.)

"In cases in which the People rely primarily on circumstantial evidence, the standard of review is the same. [Citations.] 'Although it is the duty of the [trier of fact] to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the [trier of fact], not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citations.]' [Citation.] ' "Circumstantial evidence may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt." ' " (*People v. Thomas* (1992) 2 Cal.4th 489, 514; see *People v. Perez* (1992) 2 Cal.4th 1117, 1126.)

"The trial court sitting as the trier of fact is required to resolve various conflicts in the evidence and determine the credibility of witnesses, including the opinions of experts." (*City of El Monte v. Ramirez* (1982) 128 Cal.App.3d 1005, 1011-1012.) "Although an expert's opinion on an ultimate issue of fact is admissible, and may constitute substantial evidence [citation], the conclusion *by itself* does not constitute substantial evidence without an adequate factual foundation." (*People v. $47,050* (1993) 17 Cal.App.4th 1319, 1325.) "Like a house built on sand, the expert's opinion is no better than the facts on which it is based." (*People v. Gardeley* (1996) 14 Cal.4th 605, 618.)

B. *Prosecution Evidence*

The prosecution presented numerous witnesses who opined that an ember from the May 14 Washingtonia Fire caused the Cocos Fire, and negated the possibility that someone else started the fire from within the canyon.

1. *Chief Van Wey*

Chief Van Wey had 29 years' experience fighting fires in San Marcos. He testified that in weather conditions like those of May 14, it is common for embers to travel and start new fires. He has personally observed embers travel one-quarter mile, and has read training literature indicating they can travel farther. Van Wey concluded the Cocos Fire "was a spot fire from the Washingtonia Fire" because of "the amount of smoke and direction of the smoke from the Washingtonia Fire where [he] witnessed, and by the time [he] drove and saw the smoke from the Cocos [Fire], there was . . . no other source. Besides, it was in the direct line of the smoke."

Van Wey also testified about his familiarity with Cocos Canyon and its lack of trails or pathways. He stated he did not see anyone suspicious in or around the canyon when he discovered the Cocos Fire. He explained he ruled out the possibility "that someone could have gone down into that canyon and started the fire" because "there was no visible pathway or access or entrance that [he] saw, and from what [he] witnessed, the start of the initial smoke until [he] got there, [he] would have seen—the rate of somebody moving, [he] would have seen something."

2. *Detective Van Lingen*

Detective Van Lingen testified to his extensive training and 21-year law enforcement career, which included five years as a bomb and arson detective. Based on burn indicators, he determined that the point of origin of the Washingtonia Fire was an area under a canopy of eucalyptus and pine trees. He explained that pine needles are very flammable, and eucalyptus trees are very oily and flammable and can produce more embers than do other types of trees. He observed the trees were burned 15 to 20 feet above ground level, but did not recall seeing any tree completely engulfed in flames.

Van Lingen consulted with "wildland fire grand wizard" Douglas Allen—who later became Cheyenne's expert witness—about ember travel. Van Lingen explained to Allen he was investigating the Cocos Fire, but did not provide details. Allen responded, "Just to give you a starting point, [embers] can travel a mile or more in the Santa Ana winds." Van Lingen consulted additional reference materials regarding ember travel.

Van Lingen walked Cocos Canyon five or six times during his investigation. He did not see any remnants of trails (which he opined would survive a fire) or any human activity that could have caused the fire. Residents of Cocos Drive reported they saw no people or debris in the canyon, and Van Lingen testified that a fence separated the canyon from a condominium complex at the base of the canyon. Based on his observations of the terrain and density of the vegetation during his walks of the canyon, Van Lingen opined the fire could not have been started by someone going into the canyon—the fire was moving too quickly in one direction, and a perpetrator likely would have been seen by first responders if he or she fled in the other direction.

Based on his investigation, Detective Van Lingen concluded the May 14 Washingtonia Fire "started as an intentional act of arson, and consequently, an ember traveled from the Washingtonia Fire into [Cocos Canyon]."

3. *Fire Captain Specialist Christopher Palmer*

Fire Captain Specialist Christopher Palmer was one of the Cal Fire investigators who assisted Detective Van Lingen. He testified about his extensive law enforcement and fire investigation training, and his 20-year career with Cal Fire during which he investigated more than 500 fires. He explained that when investigating the cause of a fire, all potential causes are included until they can be excluded. If, after that process, there is more than one potential cause remaining, the cause is said to be "undetermined."

Based on his review of burn indicators at the Washingtonia Fire scene, Palmer determined the fire's point of origin and that the fire moved east to west, as evidenced by two spot fires to the west of and in line with the original fire. He determined from the burn pattern on one of the trees in the area of origin that the fire had reached the crown of the tree and "had progressed from a surface fuel into an aerial fuel." Ash and partially burned leaves downwind indicated fuel had been caught in the wind.

Palmer hiked Cocos Canyon during his investigation. Burn indicators led him to a 10-foot by 10-foot "general area of origin" in the base of the canyon about .44 of a mile from the Washingtonia Fire scene. He eliminated all possible causes of the fire,[14] except

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14 Palmer explained he eliminated the following potential causes: lightning, spontaneous combustion, campfires, smoking, debris-burning, vehicles, equipment use, railroad, shooting, fireworks, and incendiary.

ember travel from the Washingtonia Fire—"It was the only ignition source in the area," and the Cocos Fire started within five to 10 minutes of the Washingtonia Fire. He explained ember travel "is pretty common" during wind events, and has seen embers travel during large wildfires.

Palmer considered the canyon "inaccessible." He saw no signs of trails or any evidence "whatsoever" of human activity. He opined evidence of footsteps would have survived the fire.

4. *Fire Captain Specialist David LaClair*

Fire Captain Specialist David LaClair was the other Cal Fire investigator assigned to assist Detective Van Lingen. He testified regarding his extensive law enforcement and fire investigation training, and his 25-year career with Cal Fire during which he investigated more than 400 fires. He stated he personally observed embers travel while fighting fires.

LaClair performed a perimeter search and hiked Cocos Canyon. He did not find anything in the base of the canyon that could have caused the fire, nor did he observe any trails or paths. He opined the base of the canyon would have been "impassable by human traffic" before the fire, and the canyon walls would have been too steep and densely vegetated to use as an escape route.

LaClair conducted "peer review" of Palmer's findings and concurred in them. He based his concurrence on Palmer's analysis of burn indicators, witnessing the winds in Cocos Canyon, viewing photographs provided by Detective Van Lingen, considering the

weather on May 14, "and the fact that the Cocos Fire was in direct line from" the Washingtonia Fire and the smaller spot fires.

5. *Battalion Chief Timothy Chavez*

Cal Fire Battalion Chief Timothy Chavez testified he had worked for Cal Fire for 32 years, including 15 as a fire behavior analyst "going to large and complex fires and predicting fire behavior for the safety and tactical deployment [of] resources." He has taken "every fire behavior skills course that's available in the system and many other[s]," and has trained other fire behavior analysts. He has worked as a fire behavior analyst on approximately 20 fires, including the Cocos Fire. Sometime in fall 2014, Fire Captain Specialist LaClair asked Chavez to determine whether an ember from the Washingtonia Fire could have traveled to Cocos Canyon and started the Cocos Fire.

Chavez stated ember travel is well documented in fire science literature, is common in California, and he has personally witnessed at least three occasions when ember travel has caused a spot fire one-half mile to one mile away. He opined that embers can cause spot fires "anywhere from a few feet to several miles away from the fire depending on the conditions." Factors that affect the distance an ember will travel include wind speed, the size and type of ember, how high above ground the ember starts out, the terrain downwind, fuel dryness, and the fuel bed downwind. He added that red flag conditions increase the frequency of spot fires.

In estimating the maximum distance an ember could have traveled from the Washingtonia Fire, Chavez studied the relevant terrain in Google Earth, measured the distance between the Washingtonia and Cocos Fires, recalled his own experience in the

area during the fire and looked at his notes from that assignment, and looked at data from six or eight nearby weather stations for the afternoon of May 14.

Chavez testified about his use of modeling software in determining the maximum ember travel distance. He testified about the programs' strengths and weaknesses, and concluded they are appropriate to use despite their weaknesses because they have "been used and experienced by other people in the field and found to be useful." He explained he uses the models merely for "guidance"—"[i]t's not a final answer, so it just . . . helps me to decide if my own . . . estimates are reasonable."

Key software inputs for determining the maximum ember travel distance included the type, size, and number of trees on fire; the topographical position of the trees (e.g., top, middle, or bottom of a slope); and the wind speed at treetop level. Because the software did not include eucalyptus or Aleppo pine trees, Chavez selected the similar Ponderosa pine, and indicated one was burning. Chavez acknowledged that although the modeling software requires the user to input at least one "torched out" tree—that is, one in which "parts of the branches above the ground were burned, all or part"—the tree he observed at the Washingtonia Fire scene on which he based the model was merely "scorched, which meant that at some point, some part of it was on fire." He stated he "did see scorching that was pretty high off the ground, and if you see scorching, . . . there's a fair possibility that there's a dead branch up there somewhere that may have injected [an ember] into the wind." He added, "other trees looked like they had been scorched pretty badly. It wasn't a full ignition of the tree, but there [were] definitely burnt parts of tree way up high on all the other trees in the area." He opined the

Washingtonia Fire was large enough to develop an ember capable of traveling to Cocos Canyon.

Based on weather station data indicating average wind speeds of six to 15 miles per hour with gusts of 16 to 34 miles per hour, Chavez inputted wind speed at 24 miles per hour. He explained this selection was "conservative" because (1) he teaches in fire behavior classes to use instantaneous gust speed because that will determine *maximum* spotting distance; (2) he reviewed the neighbor's video, which showed a tree blowing in a manner indicative of 27- to 30-mile-per-hour winds based on a well-established visual scale; (3) he observed particular features of the canyon's terrain and exposure; (4) red flag conditions were in effect, which required that there be sustained winds of 25 miles per hour for six hours; and (5) Santa Ana winds were occurring and are fairly constant during daylight hours.

To determine the "probability of ignition" in the downwind fuel bed, Chavez selected a fuel moisture of one percent for Cocos Canyon based on its exposure to direct sunlight, low relative humidity, and high temperatures. Chavez said "anything less than five percent is extremely dangerous."

Based on these inputs, the modeling software provided an estimated maximum spotting distance of "half a mile, with a probability of ignition of 100 percent."[15] Accounting for weaknesses in the software and his personal observations of the canyon's terrain and wind patterns, Chavez concluded this was, if anything, an *underestimate* of

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15 Chavez also ran the simulation with a wind speed of 20 miles per hour, which generated a result of "somewhat less than half a mile."

the true maximum spotting distance. Moreover, Chavez explained the software has a "factor of two margin of error, which means the true results are most likely somewhere in the range of half to two times the output of the model." Thus, when accounting for the margin of error, the maximum spotting distance ranged from one-quarter mile to two miles.

Based on the "totality . . . of the circumstances"—"the wind, humidity, temperature, topography of the scene, [and] fuel sources[,] in conjunction with [his] 32 years as a firefighter and education and training as a fire behaviorist"—Chavez concluded with "fairly high confidence that [the] Cocos Fire was started from an ember from Washingtonia."

6. *Captain Spencer*

Captain Spencer, the first firefighter to respond to the Washingtonia Fire, testified he had fought more than 30 wildfires in his 30-year career with the San Marcos Fire Department. Although he did not opine on causation of the Cocos Fire, Spencer testified he was aware of embers traveling one-half mile during larger wildland fires, and one mile in larger timber incidents. He also explained the key variables in ember travel.

7. *Detective Ryan*

Detective Ryan, who was on fire patrol May 14, testified that as he drove west to evacuate residents, he saw smoke from the Washingtonia Fire blowing west, and also saw smoke coming from Cocos Canyon in the direction of the wind travel. He was familiar with Cocos Canyon from his earlier patrol days and from fighting a previous fire there.

Ryan testified he was not aware of any trails in the canyon, and he did not see any suspicious people or vehicles in the area on May 14.

8. *Deputy Anthony Mireles*

Anthony Mireles was one of the first sheriff's deputies to arrive at the Washingtonia Fire. He testified that when he secured the neighborhood, he did not see any transients or suspicious people.

C. *Defense Evidence*

1. *Douglas Allen*

Douglas Allen worked for Cal Fire for 32 years before becoming a private consultant. He personally visited the Washingtonia Fire scene, and the base of the west end of Cocos Canyon near the gated condominium complex. However, he never walked through the canyon or investigated the point of origin of the Cocos Fire. He based his investigation on photographs, reports, and witness statements. Allen conceded, "It's always better to examine the evidence firsthand."[16]

Allen testified he had seen embers travel one-half mile in large, 1,000-acre-plus fires with Santa Ana winds. He opined the Washingtonia Fire was not large enough to generate a convection column powerful enough to cause an ember to travel that far. He further opined Santa Ana winds frequently push embers to the ground, as evidenced by the smaller spot fires near the original Washingtonia Fire.

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16 Fire Captain Specialist Palmer testified he could not have determined the cause and origin without personally examining the fire indicators and walking the perimeter; he would not trust an evaluation based only on pictures.

Allen criticized the Cal Fire investigators' conclusions. He asserted Cocos Canyon was accessible; evidence of trails or human traffic would have been erased by erratic winds in the canyon; investigators failed to adequately examine the point of origin by sifting the soil or using magnets or metal detectors; and investigators failed to account for methods of starting the fire from outside the canyon, such as shooting flaming arrows or launching briquettes with slingshots with asbestos tabs.

2. *Lamont Landis*

Lamont Landis was a firefighter for 20 years and a fire investigator for 12 years before becoming a private fire consultant. Landis has seen embers travel one-half mile during "huge fires."

Landis testified to his experience with the fire behavior modeling software Chavez used. He criticized the inputs Chavez selected for his analysis. For example, Landis opined there were *scorched* trees at the Washingtonia Fire scene, but no *torched* trees. He concluded the scorched trees would not have generated a convection column sufficient to cause an ember to travel to Cocos Canyon. However, Landis acknowledged that the modeling software "applies to all variations" of burnt trees, and that inputting less than one torched tree will "zero out" any result.

Landis also criticized Chavez's selection of 24 miles per hour as the wind input, asserting Chavez should have used a lower "sustained wind" instead of gusts. Landis computed the following maximum spotting distances based on lower wind speed inputs: 0.4 of a mile at 20 miles per hour; 0.3 of a mile at 15 miles per hour; and 0.2 of a mile at

10 miles per hour. Landis conceded a red flag warning was in effect on May 14, and that one criteria for issuing this warning is sustained winds of 25 miles per hour for six hours.

D. *Juvenile Court's Ruling*

In its ruling, the juvenile court remarked that the causation issue "took up most of the trial." The court gave the following explanation for its finding that the People met their burden of establishing causation:

> "Both sides have presented substantial expert testimony regarding the ability of embers to travel through the air, to set spot fires. [¶] In my view, the witnesses presented by the district attorney having carefully inspected the terrain in question and drawing on extensive experience and expertise, collectively expressed what I believe is the more credible opinion that the Cocos Fire was caused by one or more embers from the Washingtonia Fire.
>
> "There was absolutely no evidence of any other suspects having started the fire, and any conclusion on my part to the contrary would be pure speculation. The wind conditions, the geographical proximity, the direction of the fire clearly point to the Cocos Fire being started by the Washingtonia Fire and I so find beyond a reasonable doubt."

E. *Analysis*

We begin by emphasizing the following points: (1) there was extensive expert testimony below regarding ember travel; (2) Cheyenne's counsel rigorously cross-examined the prosecution witnesses regarding the bases for their opinions; (3) Cheyenne's counsel never moved to exclude the opinions for lack of foundation; (4) the juvenile court expressly found the prosecution's expert witnesses more credible than Cheyenne's; and (5) Cheyenne reasserts on appeal essentially the same foundational arguments she made—unsuccessfully—to the juvenile court. Thus, so long as the

prosecution's experts based their conclusions on proper matter, their opinions will constitute substantial evidence that supports the juvenile court's causation finding.

Cheyenne again challenges the bases for Battalion Chief Chavez's choice of inputs for the wind speed and the number and type of "torched" trees. Substantial evidence supports his choices.

Chavez provided five reasons why his selection of 24 miles per hour was not only appropriate, but conservative: (1) using gust speed determines maximum spotting distance; (2) he corroborated his selected wind speed by viewing the neighbor's video; (3) he observed the canyon's terrain and exposure; (4) red flag conditions indicated sustained winds of 25 miles per hour; and (5) Santa Ana wind conditions are fairly constant during the day. The juvenile court was entitled to accept any (or some or all) of these explanations.

As for torched versus scorched trees, Chavez explained the modeling software's formulas do not require that a tree be entirely torched; rather, the software uses torching as a proxy for the height at which a tree injects an ember into the wind. Although Chavez acknowledged he did not see any torched trees, he did see scorching that was "pretty high" off the ground, which a sheriff's deputy and Detective Van Lingen quantified as approximately 15 to 20 feet overhead. Cheyenne's own expert, Lamont Landis, testified the modeling software is not limited to torched trees; rather, it "applies to all variations of it." However, in light of the modeling limitation that zeroes out the result if anything less than one torched tree is entered, the juvenile court could reasonably have accepted

Chavez's selection of one torched tree as a means of generating a spotting distance greater than zero.

In addition, despite the apparent absence of completely torched trees, other evidence supports the conclusion the Washingtonia Fire was substantial enough to generate an ember capable of traveling to Cocos Canyon. Chavez expressly so opined; Cheyenne's mother described the fire to the emergency dispatcher as "[t]oo big to see"; a neighbor said flames shot "a considerable ways" up the trees; law enforcement and fire personnel saw the smoke plume from four to five miles away; sheriff's deputies described the fire as "uncontrollable"; the fire burned an area approximately 111 feet by 42 feet; and Fire Specialist Palmer testified that flames reached the crown of at least one tree, indicating a "progress[ion] from a surface fuel into an aerial fuel." Thus, even if there were no torched trees, the record supports the juvenile court's acceptance of Chavez's selection of an input that would result in a maximum spotting distance greater than zero.

In response to Cheyenne's criticism that the modeling software does not offer Aleppo pines or eucalyptus trees as an input option, the juvenile court could reasonably have accepted Chavez's explanation that he selected Ponderosa pine because it is "similar" to Aleppo pine (a fact Cheyenne does not dispute). Detective Van Lingen's testimony that eucalyptus trees can produce more embers than other types of trees supports the inference that eucalyptus trees pose more fire danger than Ponderosa pines, which further supports Chavez's substitution.

Further, Chavez's testimony established the Cocos Fire started well within the software model's margin of error, even under all but the most extreme of Landis's alternate computations.

More importantly, contrary to Cheyenne's suggestion that Chavez based his opinion "in large part" on the modeling software's calculation, Chavez explained he used the models merely for guidance to confirm his estimates were reasonable. Chavez stated his ultimate conclusion was based on the "totality . . . of the circumstances," including his personal observations of the canyon's terrain and wind patterns, and his "32 years as a firefighter and education and training as a fire behaviorist." Considered as a whole, Chavez's testimony constitutes substantial evidence in support of the juvenile court's causation finding.

Although Chavez's testimony is sufficient on its own to support the juvenile court's causation finding (*In re Daniel G., supra,* 120 Cal.App.4th at p. 830), we are satisfied the trial court also properly relied on the opinions of the other prosecution witnesses regarding ember travel. Chief Van Wey, Detective Van Lingen, and Fire Captain Specialists Palmer and LaClair all opined an ember from the Washingtonia Fire started the Cocos Fire. Cheyenne's contention that their opinions are based on "cumulative generalizations" and anecdotal experiences is contradicted by the record. Although some of these (and other) witnesses testified about their personal observations of ember travel, their opinions were based on more than that—they also testified about their extensive training and experience; their familiarity with Cocos Canyon (either preexisting or gained during the investigation); their knowledge of weather conditions on

May 14; the factors that contribute to embers causing spot fires; and the well-accepted literature in fire science regarding ember travel. This evidence shows the juvenile court could reasonably have concluded the prosecution's witnesses had adequate bases for their opinions.

Cheyenne also challenges the sufficiency of the Cal Fire investigators' fire-investigation methodology. As noted, they explained that to determine the cause of a fire, all potential causes are included until all but one viable cause are excluded. Cheyenne misconstrues this methodology as impermissibly shifting the People's burden of proof to her. We disagree. The investigators explained in detail not only why they eliminated the other potential causes, but also why ember travel remained the only viable cause. This did not improperly shift the People's burden of proof to Cheyenne.

Cheyenne also contends the Cal Fire investigators' causation conclusion is unsupported by substantial evidence because they failed to interview witnesses or consider witness statements indicating suspicious people were near Cocos Canyon when the Cocos Fire started. However, LaClair testified such information was not pertinent because "there was no evidence of any foot traffic, any trash, [or] any evidence that a human had hiked down to the base of the canyon where the origin was." Palmer concurred that there was no physical evidence "whatsoever" of human activity at the point of origin of the Cocos Fire. The juvenile court was therefore justified in finding "[t]here was absolutely no evidence of any other suspects having started the fire, and any conclusion . . . to the contrary would be pure speculation."

Finally, Cheyenne challenges the Cal Fire investigators' causation determination because Chief Van Wey stated the Cocos Fire started "mid-slope," while the Cal Fire investigators determined it started at the bottom of the canyon. Thus, she reasons, the Cal Fire investigators investigated the wrong area. The record does not support this geographical distinction. First, although Chief Van Wey reported the fire as starting midslope, he testified, "Well, when I first saw it, like I said, *it was in the bottom of the canyon* and it had not caught the wind." (Italics added.) Second, LaClair explained that, when looking down from the end of Cocos Drive, "the general origin was midslope canyon to the bottom of the canyon." The juvenile court could reasonably have concluded Van Wey and LaClair were referring to the same point of origin.

In short, substantial evidence supports the juvenile court's finding that an ember from the Washingtonia Fire caused the Cocos Fire.

IV. *Sufficiency of the Evidence Regarding Multiple-Structure Enhancements*

Cheyenne also challenges the sufficiency of the evidence supporting the true finding on the multiple-structure enhancements. (See § 451.1, subd. (a)(4) ["Notwithstanding any other law, any person who is convicted of a felony violation of Section 451 shall be punished by a three-, four-, or five-year enhancement if . . . [¶] (4) [t]he defendant proximately caused multiple structures to burn in any single violation of Section 451."].) In addition to her general argument that the Washingtonia Fire did not cause the Cocos Fire—and, thus, did not destroy the structures the Cocos Fire destroyed—she also contends the People did not account for (1) other wildfires burning throughout the county on May 14; or (2) the impact of a "backfire" set by a resident

whose home was threatened, even though evidence suggested the backfire had made the Cocos Fire worse.[17] We are not persuaded.

Regarding other wildfires, Detective Van Lingen and Chief Van Wey testified regarding their knowledge of multiple damaged residential structures. Detective Van Lingen testified he personally observed multiple residential structures that had been destroyed by the Cocos Fire. He also testified about one map that documented 49 properties affected by the Cocos Fire, and another map that showed the affected properties were within a few miles of the Cocos Fire's point of origin and more than six miles away from the nearest other wildfire. Chief Van Wey testified he met with five people whose houses in the Washingtonia area of San Marcos were destroyed by the Cocos Fire. Detective Van Lingen's and Chief Van Wey's testimony constitutes substantial evidence in support of the juvenile court's finding that the Cocos Fire destroyed multiple structures.

Regarding Cheyenne's backfire theory, Chief Van Wey testified that he learned from watching the news that a few hours after the Cocos Fire began a resident started a backfire near the canyon. Detective Van Lingen investigated the backfire and determined it was started about two hours after, and about a half mile southwest of, the Cocos Fire. Van Lingen opined the resident's home was in danger of being burned. Van Lingen testified he "think[s]" he remembers hearing Chief Van Wey say the backfire made the

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17 Detective Van Lingen defined a backfire as an "intentionally set fire to consume any fuels so that any oncoming fire would die out. It's intended to save life and property."

Cocos Fire worse. Neither Van Wey nor Van Lingen knew whether the Cocos Fire had damaged any structures before the backfire started. Based on these circumstances, Cheyenne contends the People did not meet their burden of showing structures were burned as a result of the Cocos Fire and not the backfire. This contention lacks merit.

As noted, Van Wey and Van Lingen established that the Cocos Fire destroyed multiple structures. Whether the backfire made the Cocos Fire worse is of no moment. " ' "A defendant may be criminally liable for a result directly caused by his act even if there is another contributing cause. If an intervening cause is a normal and reasonably foreseeable result of defendant's original act the intervening act . . . will not relieve defendant of liability. . . . '. . . The consequence need not have been a strong probability; a possible consequence which might reasonably have been contemplated is enough.' " ' " (*People v. Cervantes* (2001) 26 Cal.4th 860, 871, citations omitted.) Evidence regarding the purpose of backfires and the threat the Cocos Fire posed to the home of the resident who started the backfire support a reasonable inference that the backfire was a foreseeable consequence of the Cocos Fire. Thus, regardless of whether the backfire made the Cocos Fire worse, the backfire does not exonerate Cheyenne.

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

NARES, Acting P. J.

O'ROURKE, J.